

AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

BOOK XII. SETTLEMENT AND RELEASE.

INTRODUCTION.

TERMS OF ISLAMIC JURISPRUDENCE.

- 1531. A settlement is a contract concluded by offer and acceptance, and consists of settling a dispute by mutual consent.
- 1532. A person making a settlement is called a settlor.
- 1533. The price of settlement is called the consideration.
- 1534. The subject matter of the settlement is the matter in dispute.
- 1535. A settlement is divided into three parts: The first part consists of a settlement by way of admission, that is, a settlement brought about by the admission of the defendant. The second part consists of a settlement by way of denial of the defendant. The third part consists of a settlement by way of silence, that is, a settlement brought about by the silence of the defendant consequent upon the absence of any admission or denial.
- 1536. Release consists of two parts: The first part consists of release by way of renunciation of a right. The second consists of release by admission of payment. Release by way of renunciation occurs where one person releases another person by relinquishing the whole of the claims he has against such person, or by subtracting or reducing a certain number of them. It is this form of release which is dealt with in this book. Release by admission of payment is in the nature of an admission and consists of the confession by one person that he has received what was due to him from another person.
- 1537. A special release is a release of a person from an action instituted in respect to a claim relating to some particular matter, such as a house, or farm, or some other matter.
- 1538. A general release is a release of a person from all actions.

CHAPTER I. CONCLUSION OF A CONTRACT OF SETTLEMENT AND RELEASE.

- 1539. A person making a settlement must be of sound mind. He need not have arrived at the age of puberty. Consequently, a settlement made by a lunatic, or an imbecile, or a minor of imperfect understanding is always invalid. A settlement made by a minor who has been authorised by his tutor is valid, provided that the settlement does not result in a clear loss. Thus, if a person brings an action against a minor who has been authorised, and such minor makes an admission thereto, the result is a valid settlement by way of admission. A minor who has been authorised may make a valid contract of settlement to the effect that he will give time for the satisfaction of his claim. If such minor agrees to a settlement in respect to part of his claim and is in possession of evidence to support the same, such settlement is invalid; if he is not in possession of such evidence, however, and his opponent is known to be ready to take an oath, such settlement is valid. If he brings an action to recover property from another, and makes a settlement in respect to the value of such claim, such settlement is valid. A settlement by him for an amount considerably smaller than the value of the property is invalid.
- 1540. A valid settlement of an action brought by a minor may be made by his tutor provided that such settlement does not result in clear loss to the minor. If there is a clear loss, the settlement is invalid. Consequently, if a person brings an action for the recovery of a certain amount of money from a minor and the father of such minor has made a settlement upon the terms that payment shall be made from the property of the minor, such settlement is valid, provided that the plaintiff is in possession of evidence in support of his claim. If the plaintiff is not in possession of such evidence, the settlement is invalid. Should money be due to a minor from another person and the father make a settlement by deducting a part thereof, such settlement is invalid if evidence exists in support of the sum due. If no such evidence exists, however, and the person is known to be willing to take an oath, the settlement is valid. A settlement made by a tutor in respect of a sum due to the minor, in consideration of property equivalent to the value of the claim, is valid. But if such consideration involves flagrant misrepresentation, the settlement is invalid.
- 1541. A release by a minor, a lunatic or an imbecile is absolutely invalid.
- 1542. A power of attorney to carry on litigation does not imply a power of attorney to make a settlement. Consequently, if a person is appointed agent to bring an action against another person and such person settles the action without obtaining the permission of his principal, such settlement is invalid.
- 1543. If any person appoints any other person his agent to settle an action and the agent accordingly makes a settlement, the principal is bound by such settlement. The agent is in no way responsible for any claim made in connection therewith, unless he has made himself a guarantor therefor, in which case he is liable. Moreover, if an agent makes a settlement by way of admission to the effect that he will give property for property, and makes such settlement in his own name, such agent becomes liable for any claim made in connection therewith, that is to say, the amount covered by the settlement may be recovered from the agent, the latter preserving the right of recourse against his principal. **Examples:-**
 - (1). An agent, acting in accordance with the term of his power of attorney, makes a settlement for a certain amount of money. The principal and not the agent will be obliged to pay such sum. But if an agent arranges a settlement for a certain sum of money and he guarantees such sum, the money in that case is recoverable from the agent, who has a right of recourse against his principal.
 - (2). In the event of a settlement being made by way of admission upon the terms that property shall be exchanged for property, the agent inducing the other party to settle with him in respect to which the settlement is made may be recovered from the agent, who has a right of recourse against the principal, owing to the transaction being in the nature of a sale.
- 1544. If a third person who is not authorised thereunto, that is to say, who acts without permission, intervenes in an action between two persons and makes a settlement with one of them, such settlement is valid in the following cases, but the unauthorised person is held to have acted on his own initiative: if such person guarantees the sum covered by settlement; if he allows the sum covered by the settlement to attach to his own property; if he allows the sum covered by the settlement to attach to certain specific money or goods present at the time; or if he makes a settlement for a certain sum of money and delivers that sum of money. In the latter case, should such party intervening fail to deliver the sum of money covered by the settlement, such settlement is dependent upon the adoption of the transaction by the defendant. The settlement is valid if adopted by the defendant, who must then pay the sum covered by such settlement. If he does not do so, the settlement is null and void, the action remaining undisturbed.

CHAPTER II. THE CONSIDERATION AND SUBJECT MATTER OF THE SETTLEMENT.

- 1545. If the consideration of the settlement is some specific object, such object is considered as an article which has been sold. If it is a debt, it is considered to be the price. Consequently, anything which may be the subject of sale or the price thereof in a contract of sale, may also be the consideration for a settlement.
- 1546. The consideration of the settlement must be the property of the person making the settlement. Consequently, if the person making the settlement offers some other person's property as the consideration for the settlement, such settlement is invalid.
- 1547. If it is necessary to take and give delivery of either the consideration of the settlement or the subject matter thereof, such thing must be clearly defined. If not, it need not be clearly defined. **Examples:-**
 - (1). A brings an action against B with regard to a house in the possession of B. B brings an action against A with regard to a garden in the possession of A. Both agree to a settlement of their actions without defining the nature of the dispute.
 - (2). A brings an action against B with regard to a house without defining the nature of the dispute, and they come to a settlement on the terms that the defendant shall pay the plaintiff a certain sum of money and the plaintiff shall drop the action. The settlement is valid. But if a settlement is made whereby the plaintiff gives the defendant a certain sum of money and the defendant in consideration thereof gives up his claim, such settlement is invalid.

CHAPTER III. THE SUBJECT MATTER OF THE SETTLEMENT.

SECTION I: SETTLEMENT IN RESPECT TO SPECIFIC PROPERTY.

- 1548. If a settlement by way of admission is made with regard to property in an action relating to specific property, such settlement is in the nature of a sale, and there is an option for defect, an option of inspection, and a contractual option, and, in the event of either the subject matter or the consideration of the settlement being real property, a right of pre-emption attaches thereto. If the whole or part of the subject matter of the settlement is seized by someone who is entitled thereto, the plaintiff may recover the amount of the consideration from the defendant, that is to say, either the whole or a portion thereof. If the whole of the consideration of the settlement or part thereof is seized by someone who is entitled thereto, the plaintiff may recover from the defendant the subject matter of the settlement, that is to say, the whole or part thereof.yvT Example:- A brings an action against B claiming a house from him. B admits that the house belongs to A and the two partners agree to a settlement for a certain sum of money. The house is considered to have been sold to the defendant, and, as stated above, the transaction is treated as though it were a sale.
- 1549. If a settlement by way of admission is made in an action with regard to property in respect to the usufruct thereof, such settlement is in the nature of hire and is treated as though it were a contract of hire.yvT Example:- A brings an action against B claiming a garden from him. B makes a settlement with A on terms that A is to live in this house for a certain period. A is considered to have taken the house on hire in exchange for the garden in respect to such period.
- 1550. A settlement by way of denial or silence amounts to receiving satisfaction in the case of the plaintiff, and abstention from swearing the oath by the defendant, whereby the point at issue is decided. Consequently, a right of pre-emption attaches to real property which is the consideration for a settlement, but does not attach to real property which is the subject matter of the settlement. If any person who is entitled thereto seizes the whole or part of such real property, the plaintiff must return to the defendant the amount of the consideration for the settlement, that is to say, the whole or a portion thereof, and may bring an action against the person who claims to be so entitled. If either the whole or part of the consideration is seized by someone entitled thereto, the plaintiff may again bring an action in respect thereto.
- 1551. If any person brings an action to recover any specific property, as, for example, a garden, and agrees to a settlement in respect to a portion thereof and releases the defendant in respect to the remainder of the action, such person is considered to have received a part of his claim and to have foregone the rest, that is to say, to have relinquished his right to bring an action in respect of the remainder.

SECTION II. SETTLEMENT WITH REGARD TO DEBT AND OTHER MATTERS.

- 1552. If any person effects a settlement with any other person in respect to a portion of a claim that he has against such person, the person effecting the settlement is considered to have received payment of part of the claim and to have foregone his right to the balance, that is to say, to have released such person from the remainder.
- 1553. If any person effects a settlement whereby a debt repayable forthwith is converted into a debt repayable at some future date, he is considered to have relinquished his right to payment forthwith.
- 1554. If any person effects a settlement whereby a debt repayable in sound coin may be repaid in base coin, such person is considered to have relinquished his right to payment in sound coin.
- 1555. A settlement may validly be effected in actions relating to the right of taking water, the right of pre-emption and the right of way, whereby a payment is made in order to avoid swearing an oath.

CHAPTER IV. FUNDAMENTAL CONDITIONS GOVERNING SETTLEMENT AND RELEASE.

SECTION I. FUNDAMENTAL CONDITIONS GOVERNING SETTLEMENT.

- 1556. When the settlement is complete, one of the two parties may not go back therefrom. BY agreeing to the settlement, the plaintiff becomes entitled to the consideration for the settlement. He no longer possess any right to bring an action. The defendant may not claim the return of the consideration for the settlement from him.
- 1557. In the event of the death of one of the two contracting parties, the heirs may not cancel the settlement.
- 1558. If the settlement takes the form of giving something in satisfaction, the two parties thereto may cancel and rescind the settlement of their own accord. If the settlement does not take such form, but consists of giving up certain rights any cancellation thereof is invalid. (See Article 51.)
- 1559. If a contract of settlement is concluded whereby a payment is made in order to avoid swearing an oath, the plaintiff is considered to have relinquished his right of bringing an action, and he cannot have the defendant put on his oath.
- 1560. If the consideration for the settlement is destroyed in whole or part before it has been handed over to the plaintiff, and such consideration is a thing which is specified, it is considered to be in the nature of a thing seized by someone entitled thereto. That is to say, if a settlement is made by way of admission, the plaintiff may claim the whole or part of the subject matter of the settlement from the defendant. If the settlement is made by way of denial or silence, the plaintiff may proceed with his action. (See Articles 1548 and 1550.) If the consideration for the settlement is a debt that is to say, consists of things which are not specified, such as so many piastres, the settlement is not thereby affected, and the plaintiff is entitled to receive from the defendant an amount equivalent to the portion lost.

SECTION II. FUNDAMENTAL CONDITIONS GOVERNING RELEASE.

- 1561. If any person states that he has no claim against or dispute with some other person, or that he is not entitled to anything from him, or that he has finished or given up a claim he had against him, or that he is no longer entitled to anything from him, or that he has received complete satisfaction from him, he is considered to have released such person.
- 1562. If any person releases any other person from any obligation, such obligation ceases to exist and he can no longer make any claim in connection therewith. (See Article 51.)
- 1563. A release does not extend to anything happening in future. That is to say, if one person releases another, any rights antecedent to the release cease to exist. Such person may, however, bring an action with regard to rights which accrue after the release.
- 1564. If any person releases any other person from an action relating to a particular matter, such release is a special release and no action will be heard with regard to that matter. He may, however, bring an action with regard to any other matter.yvT Example:- A releases B from an action with regard to a house. No action will be heard concerning such house. An action, however, will be heard relating to a farm and similar matters.
- 1565. If any person states that he has released any other person from all actions or that he has no claim in respect to him, such release is general, and he may not bring an action in respect to any right which accrued prior to the release, to the extent that no action relating to a right accruing by reason of a contract of guarantee will be heard. Thus, if a person brings an action alleging that another person was surety for some third person, the action will not be heard. Nor may such person allege that some other person was surety for some person prior to that person's release. (See Article 662.)
- 1566. If a person sells property to some other person and receives the price and releases the purchaser from all actions relating to the thing sold, and the purchaser likewise releases the vendor from all actions with regard to the price and a document is drawn up between them on these lines, and the thing sold is seized by someone entitled thereto, the release ceases to be of any effect and the purchaser may claim the return of the price from the vendor. (See Article 52.)
- 1567. The persons who are released must be known and designated. Consequently, if any person states that he has released all persons who are in his debt or that he has no claim upon any person whatsoever,such release is invalid. But if he states that he has released the people of a certain place and people of such place and the number thereof are definitely known, the release is valid.
- 1568. A release is not dependent upon acceptance. but if the release is disclaimed it is of no effect. Thus, if one person releases another there is no need for the latter to accept. But if at the meeting where the release is made, such person states that he refuses to accept the release, such release is of no effect. If a person disclaims a release after having accepted it, it is of no effect. Again, if a person in whose favour a transfer of debt has been made releases the transferee, or a creditor releases a surety, or the transferee, or the surety disclaims the release, such release continues to be effective.
- 1569. A person who is dead may validly be released from his debts.
- 1570. If a person releases one of his heirs from his debts during the course of a mortal sickness, such release is not valid and executory. If he releases a person who is not his heir from his debts, however, such release is effective as regards a third of his property.
- 1571. If a person whose estate is overwhelmed by debts releases a person who is indebted to him during the course of a mortal sickness, such release is invalid and not executory.

